

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JEROME JUNIOR WASHINGTON,)
Plaintiff,) Civil Action No. 18 – 1558
v.)
SUPERINTENDENT GILMORE, et) Magistrate Judge Lisa Pupo Lenihan
al.,)
Defendants.)
)

MEMORANDUM ORDER

Plaintiff has filed what has been construed as a Motion to vacate this Court's Order dated June 10, 2022, which dismissed this case with prejudice for Plaintiff's failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b) because he did not file a response to the Medical Defendants' Motion for Summary Judgment. (ECF No. 128.) Essentially, Plaintiff asks this Court to vacate its Order of dismissal and reopen this case to rule on the merits of the Medical Defendants' Motion for Summary Judgment at ECF No. 118. In support of his Motion, he states that he did mail in his response to the summary judgment motion on or about December 7th or 8th, and that he was unaware that it was not received by the Court because he did not receive the Court's Order to Show Cause that was dated April 6, 2022. He submits evidence of a cash slip dated December 7, 2021, which he states was for mailing of his response in opposition to the summary judgment motion, and he also states that while he did not receive the Court's Order to Show Cause that was dated April 6, 2022, he did receive a confiscated items receipt for legal mail that was in an envelope addressed to him but meant for a different plaintiff with inmate number NX6961. While the Court has no way to confirm whether Plaintiff's cash slip dated December 7, 2021 was for mailing of his response in

opposition to the summary judgment motion, the Court can confirm that on April 6, 2022, it did issue an order in another case for a plaintiff with inmate number NX6961,¹ and, as such, it is logical to conclude that the orders were inadvertently switched in the envelopes for the two plaintiffs. Given that Plaintiff did not receive the Court's Order to Show Cause letting him know that his response in opposition to the Medical Defendants' Motion for Summary Judgment had not been filed, the Court finds that in the interest of justice it must vacate its Order of dismissal and reopen this case. Accordingly, this 6th day of July, 2022,

IT IS HEREBY ORDERED that Plaintiff's Motion to Reopen Case and to Vacate Memorandum Opinion and Order (ECF No. 128) is **GRANTED**.

IT IS FURTHER ORDERED that the Court's Memorandum Opinion and Order (ECF No. 125) is **VACATED**.

IT IS FURTHER ORDERED that the Medical Defendants' Motion for Summary Judgment (ECF No. 118) is **REOPENED**.

IT IS FURTHER ORDERED that Plaintiff's Motion for a Telephone Conference to Correct Error of Memorandum Opinion and Judgment (ECF No. 131), Motion for Production of Documents (ECF No. 132), and Motion for Order to Show Cause (ECF No. 133) are **DENIED** as moot.

AND IT IS FURTHER ORDERED that Plaintiff's response in opposition to the Medical Defendants' Motion for Summary Judgment is due by August 8, 2022.

/s/ Lisa Pupo Lenihan
Lisa Pupo Lenihan
United States Magistrate Judge

¹ See Stokes v. Wetzel, et al., No. 2:21-cv-1060 (W.D. Pa.) (ECF No. 31).

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